

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TRUSTEES OF THE METAL POLISHERS :
LOCAL 8A-28A FUNDS, :
: Plaintiff, :
: :
-against- : ORDER
: 17-CV-159 (JFB)(SIL)
: :
INTEX MARBLE & METAL INC., :
: Defendant. :
-----X

JOSEPH F. BIANCO, District Judge:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 16 2018 ★

LONG ISLAND OFFICE

On June 21, 2017, the Court issued an Order granting plaintiff's motion for entry of default judgment against defendant, and referring this matter to Magistrate Judge Steven I. Locke for a Report and Recommendation to address the issue of damages and other relief sought by plaintiff. On February 7, 2018, Magistrate Judge Steven I. Locke issued a Report and Recommendation (the "R&R," ECF No. 16) recommending that plaintiff be awarded damages in the total amount of \$41,909.08, plus additional daily interest and liquidated damages. The R&R was served on plaintiff on February 23, 2018. (ECF No. 17.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (R&R at 11.) The date for filing any objections has thus expired, and defendant has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety and awards plaintiff damages in the total amount of \$41,909.08, plus additional daily interest and liquidated damages.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district

court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'") (quoting *Thomas*, 474 U.S. at 155)).

Although defendant has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that plaintiff is awarded damages in the total amount of \$41,909.08, plus additional daily interest and liquidated damages.

IT IS FURTHER ORDERED that plaintiff serve a copy of this Order on defendant.

SO ORDERED.

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 16, 2018
Central Islip, New York